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CONDEMNATION OF MUNICIPAL PROPERTY WITHOUT COMPENSATION. — An interesting and apparently unique case has just been decided in the federal court for the district of Massachusetts. Under the general permission granted it by the state, the United States condemned part of a city park for a post-office site. The city, not owning the fee, intervened, and demanded damages on the ground that its easement was being confiscated. Refusing this request, the court ruled that the only question open was whether the park or the post-office was of greater importance to the public. If the former, then the condemnation for the purpose of the latter would be enjoined; otherwise, it would be permitted, but without compensation. Permission was granted to submit evidence upon this point. *In re Certain Land in Lawrence*, 119 Fed. Rep. 453.

It is undoubted that the legislature may authorize the condemnation of property already devoted to a public use. See LEWIS, EM. DOM. § 276. But the question of compensation does not seem to have been expressly decided before. The cases nearest in point were either determined upon a particular statute, or went off because the proper parties were not joined, or because the land owner had already accepted the Act authorizing the condemnation. *Millbury v. Blackstone Canal Co.*, 8 Pick. (Mass.) 473; *People v. Kerr*, 27 N. Y. 188; *Prince v. Crocker*, 166 Mass. 347.

Another Massachusetts case, however, holds that a city's cemetery cannot be given by the legislature to a private company without compensation. *Mt. Hope Cemetery v. Boston*, 158 Mass. 509. The decision, apparently based upon the double ground that the cemetery was held by the city in its private capacity and that the grantee was a private company, suggests two possible lines of cleavage in cases similar to the principal case. Is it decisive that the condemned land is held by the city in its public rather than in its private capacity? or that the land condemned is to be used by a governmental agency rather than by a corporation organized for gain? That is, can the state authorize the condemnation without compensation of a city park? Can it of a city hall? If it can do one or both in order to build a state prison, can it necessarily authorize a railroad to condemn either or both? The principal case in effect answers the first question in the affirmative, and a *dictum* asserts that it would make no difference that the object was to build a railroad instead of a governmental building. It was also suggested that the well recognized line drawn between property held by a city in trust for the public, such as school houses, highways, parks, etc., and that used for its own private purposes, such as engine-houses, cemeteries, city halls, etc., might distinguish property which could be taken without compensation from that which could not. Since the loss of a park injures the general public as well as the city residents, the difficulty of the city's distributing equitably the money received as compensation is a strong reason for the result in the principal case; whereas it is obviously unfair to deprive a city of its engine-house or city hall, because the loss is direct and immediate, not to the public in general, but to the corporate body as such. On the other hand, though some courts may not consider it absolutely unreasonable that a state should condemn — without making compensation — a park, or possibly a city hall, to erect a prison or hospital, it must seem unjust to permit a railroad to condemn such property without paying for it. The cases upon the point are necessarily rare, as it is most extraordinary for a state to condemn public land without the consent of the municipality that owns it.